

STATEMENT OF THE CASE

Appellant-Defendant, Bertha Bedwell (Bertha), appeals her conviction for conspiracy to commit arson, a Class B felony, Ind. Code §§ 35-41-5-2; 35-43-1-1(b).

We affirm.

ISSUE

Bertha raises one issue on appeal, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt her conviction for conspiracy to commit arson.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the verdict follow. Between December 2000 and February 2004, Jerry Bascom (Jerry), his wife Samantha (Samantha) and her son, P.B., from a previous marriage, lived in a modular home in Coalmont, Indiana. Samantha was the owner of record and the home was insured by State Farm. In February 2004, Jerry and Samantha separated and Samantha moved in with her mother, Bertha. In March of 2004, Samantha entered into an agreement to rent out the modular home to Dee (Dee) and Keith Robertson (collectively, the Robertsons) on a rent-to-own basis.

Following the Robertsons' move into the modular home, Samantha visited them and informed them that she did not own the land the home was sitting on and asked the Robertsons to tear up the original contract. Because Dee believed that she had contracted to buy the home and three lots of land, she refused to destroy the contract. Bertha was present during this exchange between Dee and Samantha. After relations with Samantha deteriorated

further, the Robertsons moved some of their belongings out of the modular home and into another property located in Jasonville, Indiana. They were still living in the modular home on June 5, 2004.

In May of 2004, Samantha contacted State Farm, inquiring about the amount of insurance on the modular home. She told the insurance agent that she was experiencing financial difficulties. During that same time, Samantha twice talked to E.C., a friend of her son, and asked him to burn down the modular home in exchange for \$500.00. Samantha indicated that the money for the arson was to come from the insurance money for the house. Both times, E.C. refused. Bertha was present during the second meeting between Samantha and E.C and partook in the conversation.

On June 4, 2004, Samantha approached W.A. and P.B. while the boys were playing basketball. Samantha started talking to her son, P.B., about a fire and money. W.A. overheard Samantha's comments and as W.A. was a "pretty serious" drug user at the time, he asked what they were discussing. (Transcript p. 361). Samantha told W.A. that if he burnt down the modular home, she would pay him \$500.00. W.A. indicated he would do it.

That night, W.A. spent the night at Bertha's house. He and P.B. stayed in a camper in the side yard. Samantha told the boys to set the fire at 1 a.m. and gave them gloves and candles. Bertha gave P.B. the keys to the modular home and told them to "make sure [to] get it done and don't tell [her] husband because he'll call the cops." (Tr. p. 367). At 1 a.m., W.A. and P.B. got ready and walked to the modular home. Once there, P.B. unlocked the door and the boys entered. Inside, they lit phone books, newspapers and clothing. After they

confirmed that the home was on fire, they returned to the camper, played some video games and went to sleep. At the time of the fire, the Robertsons were not at home.

When W.A. returned home, his mother asked him if he knew anything about the fire. After initially denying all involvement, he finally admitted to it. W.A.'s mother contacted the local police department. Detective Rob Gambill of the Clay County Sheriff's Department met with W.A.

On October 26, 2005, the State filed an Information, charging Bertha with Count I, conspiracy to commit arson for hire, a Class B felony, and Count II, arson for hire, a Class B felony. On June 18 through June 20, 2007, a jury trial was held. At the close of the evidence, the jury found Bertha guilty of Count I, conspiracy to commit arson for hire and not guilty of Count II, arson for hire. On July 18, 2007, after a sentencing hearing, the trial court sentenced Bertha to six years imprisonment, to be entirely served on home detention.

Bertha now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Bertha contends that the State failed to present sufficient evidence to convict her of conspiracy to commit arson for hire, a Class B felony. Specifically, she claims that the State failed to prove that (1) she agreed to commit the arson and (2) she committed an overt act in furtherance thereof.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 213-14 (Ind. Ct. App. 2007),

trans. denied. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* at 214. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

Conspiracy to commit arson for hire, a Class B felony is defined by I.C. § 35-41-5-2 as: “(a) A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. . . (b) the [S]tate must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement.” And “a person who commits arson for hire commits a Class B felony.” I.C. § 35-43-1-1(b).

I. *Conspiracy*

First, Bertha contends that the State failed to prove beyond a reasonable doubt that she conspired with Samantha, P.B., and W.A. to commit arson for hire. In particular, she focuses on the testimony of E.C., W.A. and W.A.’s mother. Describing internal contradictions in E.C.’s and W.A.’s trial testimony, Bertha also asserts discrepancies between E.C.’s and W.A.’s mother’s testimonies. At trial, E.C. testified that Bertha was present when Samantha asked him the second time to set fire to the modular home. On the other hand, W.A.’s mother testified that at the day before the fire, she witnessed Samantha ask E.C. to set fire to the home. She did not report that Bertha was present during that solicitation.

In essence, Bertha's argument is nothing more than an invitation for this court to re-evaluate witness credibility. Here, the jury observed first-hand the testimony of the witnesses, as well as their cross-examination by defense counsel. Armed with that information, the jury made its determination. In making its decision, the jury considers all the evidence, including any inconsistencies, before it comes to a conclusion. In doing so, it decides which version of the situation to accept. As such, the jury heard the testimony and made its credibility determinations, which we will not disturb.

II. Overt Act

Next, Bertha claims that the State failed to prove that she committed an overt act in furtherance of the conspiracy. We disagree. At trial, W.A. testified that Bertha gave him and P.B. the keys to gain access to the modular home. As the jury determined W.A.'s testimony to be credible, we find that the act of providing entry into the home so that W.A. and P.B. could set the fire was proven beyond a reasonable doubt by the State.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt Bertha's conviction for conspiracy to commit arson.

Affirmed.

KIRSCH, J., and MAY, J., concur.